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DISTRICT OF NEVADA

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8
9 UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

10
11 **Federal Trade Commission,**

12 Plaintiff,

13 v.

14 **Global Net Solutions, Inc.,** a Nevada corporation;

15 **Global Net Ventures, Ltd.,** a United Kingdom company;

16 **Wedlake, Ltd.,** a corporation;

17 **Open Space Enterprises, Inc.,** a Nevada corporation;

18 **Southlake Group, Inc.,** a Nevada corporation;

19 **WTFRC, Inc.,** a Nevada corporation doing business as
20 **Reflected Networks, Inc.;**

21 **Dustin Hamilton,** individually and as an officer or director
22 of **Global Net Solutions, Inc., Global Net Ventures, Ltd.,**
and **WTFRC, Inc.;**

23 **Tobin Banks,** individually and as director of **Open Space**
24 **Enterprises, Inc.;**

25 **Gregory Hamilton,** individually and as an officer and
26 director of **Southlake Group, Inc.;**

27 **Philip Doroff,** individually and as an officer of **Reflected**
28 **Networks, Inc.,** now renamed **WTFRC, Inc.;** and

Paul Rose, individually;

Defendants.

Civil Action No.

CV-S-05-0002-PMP(LRL)

~~PROPOSED~~

TEMPORARY
RESTRAINING ORDER

1 Plaintiff, the Federal Trade Commission ("Commission"), having filed its complaint for a
2 permanent injunction and other relief in this matter, pursuant to Sections 13(b) and 19 of the
3 Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 53(b) & 57b, and Section 7(a) of the
4 Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 ("CAN-SPAM"
5 or the CAN-SPAM Act), 15 U.S.C. § 7706(a), and having moved *ex parte* for a Temporary
6 Restraining Order pursuant to Rule 65 of the Federal Rules of Civil Procedure, Fed. R. Civ. P. 65,
7 and the Court having considered the complaint, declarations, exhibits, and memorandum of law
8 filed in support thereof, and now being advised in the premises finds that:

9 1. This Court has jurisdiction over the subject matter of this case and there is good
10 cause to believe it will have jurisdiction over all parties hereto;

11 2. There is good cause to believe that the defendants have engaged and are likely to
12 engage in acts and practices that violate Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), Sections
13 5(a) and (d) of CAN-SPAM, 15 U.S.C. § 7704(a), (d), and the FTC's Adult Labeling Rule,
14 16 C.F.R. Part 316.1, and that the Commission is therefore likely to prevail on the merits of this
15 action;

16 3. There is good cause to believe that immediate and irreparable damage to the Court's
17 ability to grant effective final relief in the form of redress or disgorgement will occur from the sale,
18 transfer, or other disposition or concealment by defendants of their assets or records unless said
19 defendants are immediately restrained and enjoined by Order of this Court. There is thus good
20 cause for relieving the plaintiff of the duty to provide defendants with prior notice of the plaintiff's
21 motion;

22 4. Weighing the equities and considering the plaintiff's likelihood of ultimate success,
23 a temporary restraining order with equitable relief is in the public interest; and

24 5. No security is required of any agency of the United States for issuance of a
25 restraining order. Fed. R. Civ. P. 65(c).

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ORDER
Definitions

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3 1. **"Affirmative consent"** to receipt of a commercial email message means that:

- 4 a. the recipient expressly consented to receive the message, either in response
5 to a clear and conspicuous request for such consent or at the recipient's own
6 initiative, and
7 b. if the message is from a party other than the party to which the recipient
8 communicated such consent, the recipient was given clear and conspicuous
9 notice at the time the consent was communicated that the recipient's
10 electronic mail address could be transferred to such other party for the
11 purpose of initiating commercial electronic mail messages. 15 U.S.C.
12 § 7702(1).

13 2. **"Assets"** mean any legal or equitable interest in, right to, or claim to, any real and
14 personal property, including without limitation, chattels, goods, instruments, equipment, fixtures,
15 general intangibles, leaseholds, mail or other deliveries, inventory, checks, notes, accounts, credits,
16 contracts, receivables, shares of stock, bonds, and all cash, wherever located.

17 3. **"Commercial electronic mail message"** (or **"commercial email"**) means any electronic
18 mail message the primary purpose of which is the commercial advertisement or promotion of a
19 commercial product or service (including the content on an Internet website operated for
20 commercial purposes). 15 U.S.C. § 7702(2).

21 4. **"Defendants"** means the GNS defendants, and Paul Rose, or each of them.

22 5. **"Document"** is synonymous in meaning and equal in scope to the usage of the term in
23 Federal Rule of Civil Procedure 34(a), and includes writings, drawings, graphs, charts,
24 photographs, audio and video recordings, computer records including email, ICQ, or other
25 electronic communications, and other data compilations from which information can be obtained
26 and translated, if necessary, through detection devices into reasonably usable form. A draft or non-
27 identical copy is a separate document within the meaning of the term. Any document provided by
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1 one party to another pursuant to this Order shall be provided in a format that is accessible to the
2 receiving party.

3 6. **“Electronic mail address”** (or **“email address”**) means a destination, commonly
4 expressed as a string of characters, consisting of a unique user name or mailbox (commonly
5 referred to as the “local part”) and a reference to an Internet domain (commonly referred to as the
6 “domain part”), whether or not displayed, to which an electronic mail message can be sent or
7 delivered. 15 U.S.C. § 7702(5).

8 7. **“Electronic mail message”** (or **“email”**) means a message sent to a unique electronic
9 mail address. 15 U.S.C. § 7702(6).

10 8. **“GNS defendants”** means Global Net Solutions, Inc., Global Net Ventures, Ltd.,
11 Wedlake, Ltd., Open Space Enterprises, Inc., Southlake Group, Inc., WTFRC, Inc., doing business
12 as Reflected Networks, Inc., Dustin Hamilton, Tobin Banks, Gregory Hamilton, and Philip Doroff,
13 or each of them.

14 9. **“Header information”** means the source, destination, and routing information attached
15 to an electronic mail message, including the originating domain name and originating electronic
16 mail address, and any other information that appears in the line identifying, or purporting to
17 identify, a person initiating the message. 15 U.S.C. § 7702(8).

18 10. **“Initiate,”** when used with respect to a commercial email message, means to originate
19 or transmit such message or to procure the origination or transmission of such message. 15 U.S.C.
20 § 7702(9).

21 11. **“Procure,”** when used with respect to the initiation of a commercial email message,
22 means intentionally to pay or provide other consideration to, or induce, another person to initiate
23 such a message on one’s behalf. 15 U.S.C. § 7702(12).

24 12. **“Sender”** means a person who initiates a commercial electronic mail message and
25 whose product, service, or Internet website is advertised or promoted by the message.
26 15 U.S.C. § 7702(16).

27 13. **“Sexually oriented material”** means any material that depicts sexually-explicit
28 conduct as that term is defined in 18 U.S.C. § 2256, unless the depiction constitutes a small and

1 insignificant part of the whole, the remainder of which is not primarily devoted to sexual matters.
2 15 U.S.C. § 7704(d)(4). Sexually-explicit conduct is defined by 18 U.S.C. § 2256 to mean actual
3 or simulated:

- 4 a. sexual intercourse, including genital-genital, oral-genital, anal-genital, or
5 oral-anal, whether between persons of the same or opposite sex;
- 6 b. bestiality;
- 7 c. masturbation;
- 8 d. sadistic or masochistic abuse; or
- 9 e. lascivious exhibition of the genitals or pubic area of any person.

10 **Prohibition Against Violating the Adult Labeling Rule**
11 **I.**

12 **IT IS THEREFORE ORDERED** that defendants and their officers, agents, servants,
13 employees, and attorneys, and those persons in active concert or participation with them who
14 receive actual notice of this Order by personal service or otherwise, are temporarily restrained and
15 enjoined from initiating the transmission of a commercial email that includes sexually oriented
16 material:

- 17 A. That does not contain the phrase "SEXUALLY-EXPLICIT:" as the first nineteen
18 (19) characters at the beginning of the subject line of the message;
- 19 B. That includes sexually oriented materials within the subject line of the message;
- 20 C. That includes sexually oriented materials within the content of the message that is
21 initially viewable by the recipient, when the message is opened by the recipient and
22 absent any further action by the recipient; and
- 23 D. That does not contain only the following information within the content of the
24 message that is initially viewable by the recipient, when the message is opened by
25 the recipient and absent any further action by the recipient:
 - 26 1. the phrase "SEXUALLY-EXPLICIT:" in a clear and conspicuous manner;
 - 27 2. clear and conspicuous notice that the message is an advertisement or
28 solicitation;

1 permission of its owner, or an email address or domain name obtained by means of
2 false or fraudulent representations, or header information that is otherwise false or
3 misleading;

- 4 B. That contains, or is accompanied by, a subject header that is false or misleading; or
- 5 C. That misrepresents that any product, service, or Internet website is free.

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7 **Prohibitions Against Failing to Include An**
8 **Opt-Out Mechanism, Notice, and a Physical Postal Address**
9 **III.**

10 **IT IS FURTHER ORDERED** that defendants and their officers, agents, servants,
11 employees, and attorneys, and those persons in active concert or participation with them who
12 receive actual notice of this Order by personal service or otherwise, are temporarily restrained and
13 enjoined from initiating the transmission of a commercial email:

- 14 A. That does not contain a functioning return email address or other Internet-based
15 mechanism, clearly and conspicuously displayed, that:
 - 16 1. a recipient may use to submit, in a manner specified in the message, a reply
17 email message or other form of Internet-based communication requesting not
18 to receive future commercial email messages from the sender of the message
19 at the email address where the message was received; and
 - 20 2. that remains capable of receiving such messages or communications for no
21 less than 30 days after the transmission of the original message;
 - 22 B. That does not contain a clear and conspicuous notice of a recipient's opportunity to
23 decline to receive further commercial email messages from the sender of the
24 message; and
 - 25 C. That does not contain clear and conspicuous display of a valid physical postal
26 address of the sender of the message.
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**Prohibition Against Failing to Identify an
Email Message as an Advertisement or Solicitation**

IV.

IT IS FURTHER ORDERED that defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are temporarily restrained and enjoined from initiating the transmission of a commercial email that fails to provide clear and conspicuous identification that the message is an advertisement or solicitation.

Provided, however, that the requirements of this Part do not apply to commercial emails transmitted only to persons who have given prior affirmative consent to receipt of the message and for whom defendants maintain the records and follow the procedures set forth in Part V of this Order.

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**Requirements for Honoring Opt-Out Requests and Updating
Mailing Lists and Affirmative Consent Lists**

V.

IT IS FURTHER ORDERED that defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are temporarily restrained and enjoined from:

- A. Failing to enter into a written agreement between the GNS defendants and each person who initiates commercial email promoting the products, services, or Internet websites of the GNS defendants; selects email addresses to be sent such email; or maintains evidence of a recipient's prior affirmative consent to receive such email, which:
1. specifies that the GNS defendants are the sender of any commercial email that promotes their products, services, or Internet websites;
 2. allocates responsibility between that person and the GNS defendants to ensure that requests not to receive future commercial email from that sender

- 1 at that email address (an "opt-out request") are honored, and mailing lists
2 and prior affirmative consent lists are updated as required by this Order;
3 3. identifies the GNS defendants' principal place of business and specifies that
4 address as the physical postal address that the GNS defendants require in all
5 commercial emails initiated on their behalf;
6 4. specifies a unique method to identify any commercial email for which that
7 person is an initiator;
8 5. specifies that any email address that is the subject of a request not to receive
9 future commercial email from the GNS defendants will be removed from all
10 mailing lists and affirmative consent lists of that person within ten (10)
11 business days after the request is made;
12 6. identifies the name, address, and telephone number of each individual and
13 business entity that has access to any opt-out request;
14 7. for each individual identified in Paragraph A.6 who resides in the United
15 States, includes a photocopy of the driver's license or other State
16 identification card for such person, an express agreement to comply with this
17 Order, and an acknowledgment of receipt of this Order; and
18 8. for each individual identified in Paragraph A.6 who resides outside of the
19 United States, includes a form of governmental identification for such
20 person, an express agreement to comply with this Order, and an
21 acknowledgment of receipt of this Order;

22 B. Initiating the transmission to an email address of any commercial email promoting a
23 product, service, or Internet website of a sender more than 10 business days after
24 receipt of an opt-out request, unless the recipient makes a subsequent affirmative
25 consent to receipt of commercial emails from the sender;

26 C. Failing, within 10 business days of an opt-out request, to provide the opt-out request
27 to any person who:

- 28 1. initiates commercial email on behalf of the GNS defendants;

- 1 3. held by an agent of any defendant as a retainer for the agent's provision of
2 services to defendants; or
- 3 4. owned, controlled by, or in the actual or constructive possession of, or
4 otherwise held for the benefit of, any corporation, partnership, or other entity
5 directly or indirectly owned, managed, or controlled by any defendant;
- 6 B. Opening or causing to be opened any safe deposit boxes titled in the name of any
7 defendant or subject to access by any defendant; or
- 8 C. Incurring charges or cash advances on any credit or debit card issued in the name,
9 singly or jointly, of any defendant, or any corporation, partnership, or other entity
10 directly or indirectly owned, managed, or controlled by any defendant.

11 The assets affected by this Part shall include both existing assets and assets acquired after the
12 effective date of the Order, including, without limitation, those acquired by loan or gift, and assets
13 in the form of retainers paid to any defendant as compensation for the provision of services by any
14 defendant. Defendants Dustin Hamilton, Tobin Banks, Gregory Hamilton, Philip Doroff, and Paul
15 Rose, or any third party holding assets for the benefit of defendants Dustin Hamilton, Tobin Banks,
16 Gregory Hamilton, Philip Doroff, and Paul Rose, shall hold all assets, including, without limitation,
17 payments, loans and gifts, received after service of this Order, and must deposit payments received
18 into a domestic account at a financial institution in Clark County, Nevada that is titled in the name
19 of defendant Dustin Hamilton, Tobin Banks, Gregory Hamilton, Philip Doroff, or Paul Rose, and is
20 designated by prior written notice to counsel for the Commission. Each business entity owned,
21 managed or controlled by Dustin Hamilton, Tobin Banks, Gregory Hamilton, Philip Doroff, or Paul
22 Rose, other than Global Net Solutions, Inc., Global Net Ventures, Ltd., Wedlake, Ltd., Open Space
23 Enterprises, Inc., Southlake Group, Inc., WTFRC, Inc., doing business as Reflected Networks, Inc.,
24 shall maintain only one such designated domestic account, unless the Commission stipulates
25 otherwise in writing, and it shall be separate from the personal designated accounts of defendant
26 Dustin Hamilton, Tobin Banks, Gregory Hamilton, Philip Doroff, or Paul Rose.

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**Repatriation of Assets
VII.**

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IT IS FURTHER ORDERED that within five (5) business days following service of this Order, each defendant shall:

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- A. Repatriate to the United States all funds or assets in foreign countries held (1) by any defendant; (2) for any defendant's benefit; or (3) under any defendant's direct or indirect control;
 - B. On the same business day as any repatriation under Paragraph A above,
 - 1. notify plaintiff of the name and location of the financial institution or other entity that is the recipient of such funds or assets; and
 - 2. serve a copy of this Order on any such financial institution or other entity;
 - C. Provide plaintiff with a full accounting of all funds and assets outside of the territory of the United States held: (1) by any defendant; (2) for any defendant's benefit; or (3) under any defendant's direct or indirect control; and
 - D. Hold and retain all repatriated funds and assets and prevent any transfer, disposition, or dissipation whatsoever of any such funds or assets.

**Recordkeeping Requirements
VIII.**

IT IS FURTHER ORDERED that defendants and their officers, agents, servants, employees, and attorneys, and those persons in active concert or participation with them who receive actual notice of this Order by personal service or otherwise, are temporarily restrained and enjoined from:

- A. Failing to create and maintain books, records, accounts, and data which, in reasonable detail, accurately, fairly, and completely reflect the defendants' incomes, disbursements, transactions, and use of monies; and
- B. Destroying, erasing, mutilating, concealing, altering, transferring, or otherwise disposing of, in any manner, directly or indirectly, any contracts, accounting data, correspondence, advertisements, computer hard drives, computer tapes, discs, or

1 other computer data storage media, books, written or printed records, handwritten
2 notes, telephone logs, telephone scripts, receipt books, ledgers, personal and business
3 canceled checks and check registers, bank statements, appointment books, copies of
4 federal, state or local business or personal income or property tax returns, and other
5 documents or records of any kind which relate to their business practices or business
6 or personal finances of the defendants.

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8 **Reporting Requirements**
IX.

9 **IT IS FURTHER ORDERED** that defendants and their officers, agents, servants,
10 employees, and attorneys, and those persons in active concert or participation with them who
11 receive actual notice of this Order by personal service or otherwise, are temporarily restrained and
12 enjoined from failing to prepare and deliver to counsel for the Commission at the address given in
13 Part XV of this Order no less than forty-eight (48) hours prior to the preliminary injunction hearing
14 in this action, but in no event later than ten (10) business days after service of this Order:

- 15 A. A completed and signed individual or business financial form for each defendant, on
16 the appropriate form appended as either Attachment A or Attachment B to this
17 Order;
- 18 B. For all affiliates of any defendant and any person who has initiated commercial email
19 on behalf of any defendant, provided mailing lists or addresses of email recipients
20 used to initiate emails on behalf of any defendant, or maintained evidence of
21 affirmative consent by email recipients to receipt of emails from any defendant, since
22 January 1, 2004:
- 23 1. all available information to identify such person, including but not limited to
24 name, address, telephone number, email address, affiliate identifying codes,
25 credit card or bank account numbers, wire transfer or other payment
26 instructions, social security numbers, or any website or Internet domain
27 known to be used by such person;
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1 any other document concerning defendants' assets, affiliate program, or transactions with any person
2 identified in Part IX, Paragraph D of this Order. Plaintiff shall have the right to remove documents
3 from the premises of any defendant in order that they may be inspected, inventoried, and copied.
4 Plaintiff shall return any such removed documents to such defendant within three (3) business days,
5 or such time-period as is agreed upon by plaintiff and such defendant. Defendants, to the extent
6 they are in possession of documents relevant to this action, shall provide plaintiff with any necessary
7 means of access to these documents, including, without limitation, keys and combinations to locks,
8 computer access codes, and storage area access information;

9 If, at the time of service of this Order, correspondence, email, financial data, or any other
10 document concerning defendants' assets, affiliate program, or transactions with any person
11 identified in Part IX, Paragraph B of this Order is located outside of Las Vegas, Nevada, or in the
12 personal residence of defendant Dustin Hamilton, Tobin Banks, Gregory Hamilton, Philip Doroff,
13 or Paul Rose, or at any other residence in which they have stored such records, then such defendant
14 shall, within 48 (forty-eight) hours of service of this Order, produce such correspondence, email,
15 financial data, or any other document to plaintiff, at the United States Attorney's office, 333 Las
16 Vegas Blvd. South, Suite 5000, Las Vegas, Nevada.

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18 **Duties of Persons Holding Defendants' Assets**
19 **XI.**

20 **IT IS FURTHER ORDERED** that pending determination of the plaintiff's request for a
21 preliminary injunction, any financial or brokerage institution, business entity, or person that holds,
22 controls, or maintains custody of any account or asset of any defendant, or has held, controlled, or
23 maintained custody of any account or asset of any defendant at any time since January 1, 2004,
24 shall:

- 25 A. Prohibit any defendant from withdrawing, removing, assigning, transferring,
26 pledging, encumbering, disbursing, dissipating, converting, selling, or otherwise
27 disposing of any such asset except as directed by further order of the Court;
28 B. Deny the defendants access to any safe deposit box that is:

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- 1. titled in the name of any defendant, either individually or jointly; or
- 2. otherwise subject to access by any defendant;

C. Provide counsel for the Commission, within five (5) business days of receiving a copy of this Order, a sworn statement setting forth:

- 1. the identification number of each such account or asset titled in the name, individually or jointly, of any of the defendants, or held on behalf of, or for the benefit of, any of the defendants;
- 2. the balance of each such account, or a description of the nature and value of such asset as of the close of business on the day on which this Order is served, and, if the account or other asset has been closed or removed, the date closed or removed, the total funds removed in order to close the account, and the name of the person or entity to whom such account or other asset was remitted; and
- 3. the identification of any safe deposit box that is either titled in the name, individually or jointly, of any defendant, or is otherwise subject to access by any defendant; and

D. Upon the request by the Commission, promptly provide the Commission with copies of all records or other documentation pertaining to such account or asset, including but not limited to originals or copies of account applications, account statements, signature cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit box logs. Any such financial institution, account custodian, or other aforementioned entity may arrange for the Commission to obtain copies of any such records which the Commission seeks, provided that such institution or custodian may charge a reasonable fee not to exceed fifteen cents per page copied.

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**Credit Reports
XII.**

IT IS FURTHER ORDERED that plaintiff Commission may obtain credit reports concerning any defendant, pursuant to Section 604(1) of the Fair Credit Reporting Act, 15 U.S.C. § 1681b(1), and that upon written request, any credit reporting agency from which such reports are requested shall provide them to plaintiff Commission.

**Distribution of Order by Defendants
XIII.**

IT IS FURTHER ORDERED that defendants shall immediately provide a copy of this Order to each affiliate, subsidiary, division, successor, assign, officer, director, employee, independent contractor, webmaster, agent, attorney, and representative of any defendant, and shall, within ten (10) days from the date of entry of this Order, provide the Commission with a sworn statement that defendants have complied with this provision of the Order, which statement shall include the names and addresses of each such person or entity who received a copy of the Order.

**Service of Order
XIV.**

IT IS FURTHER ORDERED that copies of this Order may be served by any means, including facsimile transmission or electronic mail, upon any entity or person that may have possession, custody, or control of any documents of the defendants, or that may be subject to any provision of this Order.

**Correspondence With and Notice to Plaintiff
XV.**

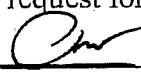
IT IS FURTHER ORDERED that for the purposes of this Order, all correspondence and pleadings to the Commission shall be addressed to:

Stephen L. Cohen, Esq.
Lawrence Hodapp, Esq.
Federal Trade Commission
600 Pennsylvania Ave., NW
Washington, DC 20580
(202) 326-3395 (facsimile).

Notice may be provided by e-mail to scohen@ftc.gov and lhodapp@ftc.gov.

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2 **Order to Show Cause**
3 **XVI.**

4 **IT IS FURTHER ORDERED**, pursuant to Fed. R.Civ. P. 65(b), that defendants shall
5 appear before this Court on the 11th day of January, 2005
6 at 3:30 o'clock P.m., at the United States Courthouse, Room 7C to show cause, if there
7 is any, why this Court should not enter a preliminary injunction, in substantially the form of this
8 order, pending final ruling on the Complaint against defendants, enjoining them from further
9 violations of Section 5(a) of the Federal Trade Commission Act, 15 U.S.C. § 45(a), Sections 5(a)
10 and (d) of CAN-SPAM, 15 U.S.C. § 7704(a), (d), and the FTC's Adult Labeling Rule, 16 C.F.R.
11 Part 316.1, and imposing such additional relief as may be appropriate.

12 Defendants shall serve answering pleadings or materials on counsel for the Commission not
13 less than 2 business days prior to the hearing on the Commission's request for a preliminary
14 injunction. ~~Plaintiff may submit reply pleadings or materials by~~ 

15 **XVII.**

16 **IT IS FURTHER ORDERED** that the Temporary Restraining Order granted herein shall
17 expire ten (10) days after entry, unless, for good cause shown, the Order is extended, or unless, as to
18 any defendant, the defendant consents that it should be extended for a longer period of time.

19 **Retention of Jurisdiction**
20 **XVIII.**

21 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this matter for all
22 purposes.

23 **IT IS SO ORDERED**, this 3rd day of January, 2005, at 4:30 P.M.

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28 **UNITED STATES DISTRICT JUDGE**
DISTRICT OF NEVADA